

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Southern Company Services, Inc.

Docket No. ER06-1259-000

ORDER ACCEPTING UNEXECUTED AMENDMENT TO  
NETWORK SERVICE AGREEMENT

(Issued September 15, 2006)

1. On July 17, 2006, Southern Company Services, Inc. (Southern), acting as agent for Alabama Power Company (Alabama Power), Georgia Power Company, Gulf Power Company and Mississippi Power Company, submitted for filing an unexecuted amendment to its network integration transmission service agreement (NITSA) with Alabama Municipal Electric Authority (AMEA). Under the amendment, AMEA would be directly assigned the construction and interconnection costs of a 115 kV radial line connecting Southern's transmission network to a delivery point owned by an AMEA municipality, with payment due in one lump sum. As discussed below, we accept the filing.

**Background**

2. Alabama Power provided AMEA with energy, transmission, and other related services under an agreement (PR Agreement) dated June 16, 1994. As relevant here, the PR Agreement terminated on December 31, 2005.<sup>1</sup> In its place, Southern and AMEA

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<sup>1</sup> The provisions governing the interconnection of AMEA's Sylacauga generating facility survive.

executed and filed the NITSA for service under Southern's open access transmission tariff (OATT).<sup>2</sup>

3. In April 2005, while the PR Agreement was still in effect, AMEA approached Southern about receiving service at a new 115 kV delivery point (Shorter Delivery Point) in Macon County, Alabama, starting on January 1, 2006. AMEA sought service at the Shorter Delivery Point for the Utilities Board of the City of Tuskegee, one of its participating municipalities. Southern agreed to construct a 1.2 mile radial line connecting its transmission system to the Shorter Delivery Point at an approximate cost of \$1.7 million. In May 2005, however, Southern informed AMEA that it could not accommodate a January 1, 2006 in-service date, but could begin service June 1, 2006.

4. Consistent with the terms of the PR Agreement, AMEA sent a letter to Southern dated November 14, 2005 acknowledging the estimate and agreeing to pay the actual costs of installation and connection. A week later, Southern informed AMEA that the Shorter Delivery Point could not be added under the PR Agreement because service could not begin until June 2006, six months after the PR Agreement was set to expire. Southern also informed AMEA that, since it would be taking transmission service under the OATT in June 2006, the Shorter Delivery Point would need to be added under the NITSA, and the costs of connecting the delivery point would be directly assigned in a lump sum to AMEA in accordance with the OATT.

5. During a May 10, 2006 meeting with Southern, AMEA questioned whether it was appropriate for Southern to directly assign AMEA the costs of the 115 kV transmission line running to the Shorter Delivery Point. Specifically, AMEA asked whether its treatment was comparable to the treatment received by Halla Climate Control (Halla), an industrial retail customer of Alabama Power. Although the line running to the Shorter Delivery point was constructed off of the line running to Halla, Southern sought to directly assign the cost of that line while Southern had rolled in the cost of the line running to Halla.

6. On May 26, 2006, Southern forwarded AMEA a draft revision to the NITSA with relevant provisions identical to the unexecuted amendment filed here. On June 2, 2006, AMEA informed Southern in writing that it refused to bear the costs of the line running to the Shorter Delivery Point. On June 15, 2006, Southern and AMEA signed a letter agreement whereby Southern agreed to file the unexecuted amendment and the parties

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<sup>2</sup> The NITSA and accompanying Network Operating Agreement were executed on December 29, 2005 and conditionally accepted for filing with the Commission by letter order issued on June 1, 2006 in *Southern Companies Services, Inc.*, 115 FERC ¶ 61,284 (2006).

agreed to be bound by the Commission's resolution of their dispute. Southern also agreed to energize the facilities on June 16, 2006.

### **Description of Filing**

7. In the instant filing, Southern has filed an unexecuted amendment to the NITSA that, if accepted, would directly assign the costs associated with the Shorter Delivery Point to AMEA and that also provided for payment in one lump sum.

8. Southern contends that its decision to directly assign the costs of the radial line running to the Shorter Delivery Point is supported by Commission precedent. It also points to several instances, including instances involving affiliates, where it has directly assigned such costs. Southern adds that AMEA was directly assigned such costs under the PR Agreement, and that AMEA had agreed to directly bear the instant costs in the November 14, 2005 letter. Southern also argues that it has always required existing customers to pay such costs in one lump sum and points to a series of examples.

### **Notice, Interventions and Protests**

9. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 43,146 (2006), with protests or interventions due on or before August 7, 2006. AMEA filed a timely motion to intervene and protest. Southern filed a motion for leave to answer. AMEA filed an answer to Southern's answer.

### **Parties' Arguments**

10. AMEA argues that the cost of the line running to the Shorter Delivery Point should be rolled in to Southern's system wide charge. AMEA contends that direct assignment would violate the principle of comparability enshrined in Order No. 888,<sup>3</sup> because Southern does not directly assign the cost of lines running to its affiliates' delivery points. AMEA points to Southern's treatment of Halla, an industrial retail customer of Southern's affiliate Alabama Power. AMEA argues that, since the line

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<sup>3</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

running to the Shorter Delivery Point was constructed off of the line running to Halla, both lines provide the same benefit to Southern's network. Since Southern rolls in the cost of the line running to Halla, AMEA requests that the Commission compel Southern to roll in the cost of the line running to the Shorter Delivery Point. In the same vein, AMEA cites Southern's alleged practice of booking its own costs of transmission facilities to "transmission," costs that AMEA states Southern rolls in, while costs like those at issue here are directly assigned, as further proof of undue discrimination.

11. AMEA states that it never agreed to direct assignment of the costs associated with the Shorter Delivery Point. According to AMEA, the November 14, 2005 letter agreeing to direct assignment was drafted with the belief that the parties would continue to negotiate under the PR Agreement. AMEA states that Southern rejected the terms of the November 14, 2005 letter, and that AMEA never agreed to direct assignment after agreeing to take service under the OATT.

12. AMEA also argues that Southern presents no justification for demanding payment in one lump sum, and that, if the Commission finds that AMEA should be directly assigned the cost of the line running to the Shorter Delivery Point, it should be allowed to make amortized monthly payments. AMEA points out that this was the practice under the PR Agreement, and states that Southern has not offered a rationale for departing from this practice. AMEA further argues that Southern has not shown that it is just and reasonable to require payment in one lump sum.

13. Southern responds by citing instances where it has directly assigned costs, and required payment in a lump sum, even with respect to its affiliates.<sup>4</sup> Southern also states that in those instances where the costs are "booked to transmission," they are done so at the cost of the installed facilities less the amount received from the customer for the material, labor, and overheads for those installed facilities. Thus, Southern asserts, if the customer pays for the actual cost of such facilities, the net amount "booked to transmission" is \$0.00. As for the line running to Halla, Southern claims that the costs of the line were appropriately booked to transmission.

14. AMEA answers that, while Southern may have cited instances where it directly assigns the costs of radial lines, Southern has not claimed that it always does so. AMEA also responds that Southern's explanation regarding the line running to Halla does

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<sup>4</sup> Southern claims that if the line to the Shorter Delivery Point had been constructed for a retail customer of Alabama Power, the retail customer would have been directly assigned the costs of the line in accordance with Alabama Power's Customer Service Procedure No. 600-001, which is on file with the Alabama Public Service Commission. *See* Southern's August 30 Answer at 11.

nothing to address AMEA's fundamental argument that Southern does not provide comparable rate treatment of all its radial lines.

## **Discussion**

### **A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motion to intervene serves to make AMEA a party to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest and to an answer unless otherwise ordered by a decisional authority. We will accept Southern's and AMEA's answers because they have provided information that has assisted us in our decision making process.

### **B. Direct Assignment or Roll-in**

17. Rolled-in pricing is appropriate when the relevant facilities are integrated into the transmission network.<sup>5</sup> This pricing is appropriate because it spreads the cost of network facilities across the entire network; as part of the network, the added facilities benefit all users of the network and thus their costs should be shared among all users of the network. In contrast, rolling in facilities not integrated with the network inappropriately forces all users to subsidize facilities that benefit only one user. Just as prohibiting direct assignment of network facilities, even if they have been added to meet a particular customer's request for service,<sup>6</sup> protects a single customer from having to subsidize facilities that benefit all users, requiring direct assignment of non-network facilities protects all network users from unfairly subsidizing facilities that benefit a single user.

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<sup>5</sup> See *City of Anaheim, California*, Opinion No. 483, 113 FERC ¶ 61,091 at P 34 (2005), *reh'g denied*, Opinion No. 483-A, 114 FERC ¶ 61,311 at P 13 (2006) (*City of Anaheim*); *Northeast Texas Electric Cooperative, Inc.*, Opinion No. 474, 108 FERC ¶ 61,084 at P 47 (2004), *reh'g denied*, Opinion No. 474-A, 111 FERC ¶ 61,189 at P 15 (2005) (*Northeast Texas Electric*).

<sup>6</sup> See *Northeast Texas Electric*, 108 FERC ¶ 61,084 at P 47; *San Diego Gas & Electric Co.*, 98 FERC ¶ 61,332 at 62,408 (2002); *Consumers Energy Co.*, 96 FERC ¶ 61,132 at 61,561 (2001); *Public Service Co. of Colorado*, 62 FERC ¶ 61,013 at 61,061 (1993).

18. The Commission has repeatedly affirmed that a showing of any degree of integration suffices for a facility to be a network facility.<sup>7</sup> The Commission allows direct assignment of costs only for non-network facilities, such as radial lines.<sup>8</sup>

19. Here, AMEA seeks to compel Southern to roll in the cost of the radial line running to the Shorter Delivery Point under the guise of comparability. AMEA points to the line Southern recently built for Halla, a retail industrial customer of Southern's affiliate Alabama Power, and claims that Southern has rolled in the costs of the line running to Halla, noting in contrast that the line running to the Shorter Delivery Point was constructed off the line running to Halla, and yet Southern proposes to directly assign the costs of the line running to the Shorter Delivery Point. Given these facts, AMEA claims that directly assigning the costs of the line running to the Shorter Delivery Point would impermissibly violate the Commission's comparability standard.

20. We cannot accept AMEA's argument. A finding of undue discrimination would not automatically justify rolled-in cost allocation; rolled-in pricing for specific facilities also requires a finding that those facilities are integrated. Whether or not the line running to the Shorter Delivery Point should be rolled in rests on its individual function and characteristics, not on Southern's treatment of other lines on its system. To hold otherwise would frustrate the rationale behind allowing rolled-in pricing, and, indeed, undermine the comparability standard by converting it into a tool to unfairly spread the cost of non-integrated facilities to all users, including users who cannot use the particular facilities at issue. To warrant rolled-in pricing, AMEA must show that the line running to the Shorter Delivery Point meets the Commission's longstanding requirement that the line exhibit some degree of integration with the network. Here, AMEA acknowledges that the line running to the Shorter Delivery Point is a radial line.<sup>9</sup> Moreover, Southern's filing indicates that the line is not integrated with the network.<sup>10</sup> Therefore, the line cannot be rolled-in.

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<sup>7</sup> *City of Anaheim*, 113 FERC ¶ 61,091 at P 34; *Northeast Texas Electric*, 108 FERC ¶ 61,084 at P 48.

<sup>8</sup> *See Northeast Texas Electric*, 108 FERC ¶ 61,084 at P 47; *Mansfield Electric Department v. New England Power Company*, 97 FERC ¶ 61,134 (2001), *reh'g denied*, 98 FERC ¶ 61,115 (2002).

<sup>9</sup> AMEA's Answer at 4, 6-7 & n.22.

<sup>10</sup> *See* Southern's July 17 Filing at Attachment C (diagram of facilities); *accord id.* at 2.

21. AMEA's comparability argument must fail for a second reason. Even if the Commission had authority over transmission service to Halla,<sup>11</sup> and undue discrimination were to be found in this case, it would still be improper to roll in the line running to the Shorter Delivery Point. If the line running to Halla is improperly being rolled-in, the remedy is to roll that line out;<sup>12</sup> that is, to directly assign it, and not to compound the problem by rolling in the non-network radial line running to the Shorter Delivery Point.

22. AMEA contends that *Florida Power & Light Co.*<sup>13</sup> supports its application of the comparability principle. AMEA cites that case for the proposition that a transmission provider must treat customers' facilities in a manner comparable to its treatment of its own facilities. AMEA's reliance on *Florida Power & Light* is misplaced. *Florida Power & Light* stands for the proposition that when a potential comparability issue exists because a facility has been improperly rolled-in, the proper remedy is to exclude that facility, not improperly include a non-integrated facility. Florida Power and Light Company (FP&L) was improperly rolling in the costs of facilities that would have been excluded under the same test it applied to Florida Municipal Power Agency's (FMPA) facilities. As a remedy, the Commission ordered FP&L to revise its proposed rate schedules to exclude the cost of those facilities that would have been excluded under the same test applied to FMPA's facilities. Contrary to *Florida Power & Light*, AMEA would have us remedy its claim of undue discrimination here by rolling in the radial lines we faulted FP&L for including in its rolled-in rate; AMEA misses that we ordered FP&L to exclude improperly rolled-in costs, not improperly roll-in the cost of non-integrated FMPA facilities.

23. AMEA also makes much of its claim that, when Southern builds delivery points for affiliates, it assigns the cost of those facilities to "transmission," an account rolled in to the system-wide transmission charges under Southern's OATT, but when non-affiliated customers such as AMEA seek a similar service those costs are directly assigned. Contrary to AMEA's assertions, accounting does not control ratemaking.<sup>14</sup>

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<sup>11</sup> As noted above, Halla is a retail industrial customer. See AMEA's Answer at 9, 13. Hence rates charged to Halla would be state-jurisdictional rates; the Commission does not set rates for service to Halla.

<sup>12</sup> This issue is not before the Commission.

<sup>13</sup> *Florida Power & Light Co.*, 113 FERC ¶ 61,263 (2005), *reh'g denied*, 116 FERC ¶ 61,013 (2006) (*Florida Power & Light*).

<sup>14</sup> *Alabama-Tennessee Natural Gas Co. v. FPC*, 359 F.2d 318, 316 (5<sup>th</sup> Cir. 1966), *cert denied*, 385 U.S. 847 (1966).

Where Southern books its facilities does not dictate how the costs should be treated for ratemaking purposes. For ratemaking purposes, what controls cost allocation is the physical fact of integration. In any event, the way Southern books the costs to transmission does not result in rolling in the costs; that is, they are booked at \$0.00.

**C. Lump Sum or Amortized monthly payment**

24. AMEA argues that Southern has not demonstrated that it is just and reasonable to require payment in a lump sum. AMEA points out that under the PR Agreement it was permitted to pay such direct assignments in amortized monthly payments, and that Southern has offered no rationale for departing from this practice.

25. Lump sum payments are not inherently suspect, and Southern is not required under its OATT to offer amortized monthly payments. Moreover, Southern has pointed to several examples of direct assignment charges collected in a lump sum. AMEA offers no reason why a lump sum payment would be unjust and unreasonable, except that it departs from the parties' practice under the PR Agreement, which, we note, has since terminated.<sup>15</sup> Since AMEA has provided us with no compelling justification to deny payment in a lump sum, we will not do so.<sup>16</sup>

**D. Conclusion**

26. Accordingly, we will accept Southern's proposed unexecuted amendment. Southern may directly assign the costs of the new line to the Shorter Delivery Point, and may require payment in one lump sum.

27. For service agreements under umbrella tariffs, waiver of prior notice will be granted if the service agreement is filed within 30 days after service commences. Here, the filing was made within 30 days after service commenced, and waiver is granted to permit a June 16, 2006 effective date.<sup>17</sup>

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<sup>15</sup> See *supra* note 1 and accompanying text.

<sup>16</sup> See *Pennsylvania Power & Light Company*, Opinion No. 428, 85 FERC ¶ 61098, at 61,352-54 (1998).

<sup>17</sup> *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993).



The Commission orders:

The Commission hereby accepts the Southern's proposed unexecuted amendment for filing, effective June 16, 2006.

By the Commission.

Magalie R. Salas,  
Secretary.